



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-92-14

FACTS:^{1/}

Until recently, you were employed as a clinical psychologist at a State Hospital. You left state employment and established a private practice. While you were a state employee, you were the individual psychotherapist for a particular patient and you saw this patient twice a week for over a year. After you left state employment, the patient's treatment team developed a discharge plan for the patient. Although you stated that you would not participate in the design of the discharge plan prior to your departure, you anticipated that it would include: DMH case management, residential placement, a day treatment program, outpatient psychotherapy and outpatient psychiatric follow-up.

When you left state employment, the patient remained an inpatient at the State Hospital and continued her treatment with another therapist. In connection with her pending discharge, the patient has indicated that she would like to use her Medicare benefits to see you in your psychotherapy practice.

QUESTION:

Does G.L. c. 268A permit you to accept a referral of this patient?

ANSWER:

Yes.

DISCUSSION:

When you left state government you became a former state employee who is subject to G.L. c. 268A, §5. Section 5(a) prohibits you, as a former state employee, from receiving compensation from or acting as agent for anyone, other than the Commonwealth, in connection with any particular matter^{2/} in which the Commonwealth is a party or has a direct and substantial interest and in which you participated as a state employee. The Commission has previously recognized that

Section 5 is grounded on several policy considerations. The undivided loyalty due from a state employee while serving is deemed to continue with respect to some matters after he leaves state service. Moreover, §5 precludes a state employee from making official judgments with an eye, wittingly or unwittingly, consciously or subconsciously, toward his personal future interest. Finally, the law ensures that former employees do not use their past friendships and associations within government or use confidential information obtained while serving the government to derive unfair advantage for themselves or others.

In re Wharton, 1984 SEC 182, 185; *see also EC-COI-88-14*. It is not relevant whether such dangers actually exist in a given situation, as the conflict of interest law is a remedial law which is intended to address situations of actual conflict as well as situations which present a potential for conflict. *Town of Edgartown v. State Ethics Commission*, 391 Mass. 83, 88-89 (1984).

The Commission has previously determined that a proposed private activity is precluded if it is in connection with the same matter in which the individual participated as a state employee. *See, EC-COI-89-7* (former state employee's participation in environmental impact process precludes his private representation of applicant in

latter stages of process as it involves same controversy); 84-31 (subsequent application identical to prior application); 87-34 (former state employee may not challenge policy or validity of draft regulations which he helped promulgate).

On the other hand, if the proposed activity is in connection with a matter which arose after the former employee left state service or is independent from a matter in which the employee participated as a state employee, it will not be precluded. *See, EC-COI-88-8; 85-74; 83-80.* For example, in *EC-COI-83-80*, a former state employee wanted to provide consulting services in connection with an environmental impact study. While he was a state employee he had participated in a prior environmental impact study on the same project, but after he left state service the scope of the project changed and included new alternatives. We concluded that the former employee could be compensated privately in connection with the second impact report if the considerations and conclusions in the new report were independent from the conclusions in the first report. Under these circumstances the new report would be a different particular matter from the first report. *See also, EC-COI-85-74* (project involving new bids on different set of buildings was new particular matter).

Applying these principles to your circumstances, we conclude that §5(a) will not preclude you from being privately compensated in connection with this referral since the referral resulted from a discharge plan developed after you left state service. We find your circumstances to be analogous to *EC-COI-83-80*, discussed above, based on your representation that it was the patient's subsequent therapist who was in a position to influence her discharge plan. Had the discharge plan been developed while you were seeing the patient, you would have participated in the plan even though you were not part of the treatment team. Since the plan was not developed until after you left state service, and after another therapist began treating the client, the referral arising out of the discharge plan will not be considered a particular matter in which you participated. *Compare, EC-COI-85-74, n.3* (if plan submitted a resubmission of initial contract would be considered same, not different particular matter).

Date Authorized: April 13, 1992

^{1/}This opinion is based on facts you have provided and the Commission has conducted no independent investigation of the facts. If these facts changed subsequent to your opinion request, you should seek further guidance from this Commission.

^{2/}"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).